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In re Application of
Boehm, et al.
Application No. 10/027,484
Filed: December 21, 2001
Attorney Docket No. CVZ-001b

DECISION GRANTING
PETITION

This is a decision on the petition under 37 CFR 1.53(e), filed May 9, 2002 (certificate of mailing date April 30, 2002), requesting, in effect, withdrawal of the January 31, 2002 Notice to File Missing Parts of Nonprovisional Application (Notice).

The application was deposited on December 21, 2001. On January 31, 2002, the Office of Initial Patent Examination mailed a Notice informing petitioners, *inter alia*, that drawing figures 20a-c and 21a-c described in the specification appeared to have been omitted.

In response to the Notice, on May 9, 2002 (certificate of mailing date April 30, 2002) petitioners filed the present petition, an executed declaration with the surcharge for its late filing, a petition for a one month extension of time and required fee, and 15 sheets of substitute drawings. Petitioners request that drawing figures 20a-c and 21a-c be accorded a filing date of December 21, 2001 on the basis that 14 sheets of drawing figures, including drawing figures 20a-c and 21a-c, were received in the Patent and Trademark Office (PTO) on December 21, 2001. In support, the petition is accompanied by a copy of applicants' Express Mail label with a date-in of December 21, 2001 and a copy of applicants' itemized postcard receipt showing an Office of Initial Patent Examination generated barcode citing December 21, 2001 as the date of receipt. The postcard lists, *inter alia*, that the filing included 14 sheets of drawings.

Petitioners are advised that the provisions of 37 CFR 1.10(e) cannot be utilized to prove the contents of a mailing. MPEP 513 states, "Where there is a dispute as to the contents of correspondence submitted to the Office,...an applicant may not rely upon the provisions of 37 CFR 1.10(e) to establish what document(s)... were filed in the Office with such correspondence. Rather, where the records of the Office (e.g. the file of the application) contain any document(s)... corresponding to the contents of the correspondence at issue, the Office will rely upon its official record of the contents of such correspondence in absence of convincing evidence (e.g., a postcard receipt under MPEP 503 containing specific itemization of the document(s)... purported to have been filed with the correspondence at issue) that the Office received and misplaced any document(s).. that is not among the official records of the Office."

Fortunately, petitioners have supplied their date stamped itemized postcard. The return postcard constitutes *prima facie* evidence that 14 sheets of drawing figures, including drawing figures 20a-c and 21a-c, were filed on December 21, 2001. MPEP 503. In addition, a review of the application papers in the file reveals that drawing figures 20a-c and 21a-c were present, albeit not with officially recognized labels. Accordingly, the request is granted.

No petition fee has been or will be charged in connection with this matter.

The application is being returned to Office of Initial Patent Examination for further processing, with a filing date of December 21, 2001, using the 15 sheets of substitute drawings filed with the instant petition.

Any inquiries pertaining to this matter may be directed to Petitions Attorney E. Shirene Willis at (703) 308-6712.



E. Shirene Willis
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy